

## **STREET TRADING BYLAWS FOR NYANDENI MUNICIPALITY**

### **1. DEFINITIONS**

In these bylaws, except as otherwise expressly provided or unless the context otherwise requires-

“approval” means approval by the authorized official and “approve” has a corresponding meaning.

“association” means persons who are self employed and have organized themselves into a street trader association with a constitution and a code of conduct;

“authorized official” means an official of the Council to whom it has delegated a duty, function or power under these bylaws in relation to the exercise or performance of that duty, function or power and includes any employee acting under the control and direction of such official;

“Council” means the Council of the Nyandeni Municipality and includes, in relation to a duty function or power under these bylaws, a committee or official of the Council to whom it has delegated that duty, function or power “local authority” service means any system conducted by or on behalf of a local authority for the collection, conveyance, treatment or disposal of refuse, sewage or stormwater or for the generation, impounding storage, purification or supply of water, gas or electricity;

“local authority service works” means all property or works of whatsoever nature necessary or desirable for or incidental to any local authority service

“nuisance” bears the meaning given to it by the Ordinance, or any amendment thereof;

“prescribed” means prescribed by the Council by resolution;

“property” in relation to a street trader, means any goods, receptacle, vehicle or movable structure used or intended to be used in connection with the carrying on of his business as such;

“public place” means any street and any square park, recreation ground, garden, commonage or enclosed or open space-

- (a) which being situated in an approved private township, was set apart for the use and benefit of the public and is shown on the general plan of such township; or
- (b) which being situated in a local authority area, the local authority is vested with the ownership, control or management thereof by law or by deed of title for the use and benefit of the public, or which the public has the right to use; or
- (c) to which, if situated in an existing private township (whether such existing private township is or is not itself situated in a local authority area), the public or the inhabitants have a common right, or to which if shown on a general plan or diagram or any plan compiled in the office of the Surveyor-General and commonly known as a lay-off or deduction plan filed or record in the Office of the Surveyor-General or in the Deeds Registry, the owners of lots in such existing private township have a common right;

“public road” means any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access, and includes-

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or drift traversed by any such road, street or thoroughfare; and
- (c) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare;

“roadway” means that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic which is between the edges of the roadway;

“sell” includes-

- (a) barter, exchange or hire;
- (b) display, expose, offer or prepare for sale;
- (c) store with a view to sell; or
- (d) provide a service for reward’ and “sale” has a corresponding meaning;

“sidewalk” means that portion of a verge intended for the exclusive use of pedestrians;

“street trader” means a person who carries on the business of street trading;

“street trading” means the selling of any goods or the supplying or offering to supply any service for reward, as a street vendor, peddler or hawker in a public road or public place but does not include the sale of newspapers only; “the act” means the Business Act, 71 of 1991, and includes the regulations made thereunder;

“vehicle” includes-

- (a) a self propelled vehicle
- (b) a trailer
- (c) a hand drawn or propelled vehicle; and

“verge” means that portion of the road, street or thoroughfare including the sidewalk, which is not the roadway or the shoulder.

In these bylaws unless the contents otherwise indicates, any word of expression defined in the Act shall bear the meaning or given to it.

For the purpose of these bylaws a single act of offering for sale or selling goods or services in or from a public road or public place constitutes the carrying on of the business of a street trader.

For the purpose of these bylaws a reference to a person carrying on the business of street trader shall include any employee of any such person.

## **2. APPLICATION**

No person shall carry on the business of a street trader unless he or she

- (a) has obtained the written approval of the Council to do so; and
- (b) is a member of a street trader association recognized by the Council

## **3. PROHIBITIONS**

No person shall carry on the business of a street trader-

- (a) at a place or an area declared under section 6A(2)(a) of a Act as a place or area in which the carrying on of street trading is prohibited;
- (b) on a verge contiguous to
  - (1) a building belonging to or occupied solely by, the Sate or the Council;
  - (2) a church or place of worship; or
  - (3) a building declared to be a National Monument under the National Monument Act, 28 of 1969, and any amendment thereof except to the extent that the carrying on of such businesses is permitted by a notice or sign erected or displayed by the Council and in compliance therewith;

- (c) on the verge contiguous to a building in which businesses is being carried on by any person who solely or mainly sells goods of the same or similar nature as goods being sold by the street trade concerned, without the consent of the person;
- (d) In that half of a public road contiguous to a building used for residential purposes, if the owner or person in control or any occupier of the building objects thereto;
- (e) at a place where it substantially obstructs pedestrians in the use of a sidewalk or take up a position or deposit his property on a sidewalk or as to do so;
- (f) at a place where it causes an obstruction vehicular traffic;
- (g) at a place where it causes obstruction in front of
  - (i) an entrance to or exit from a building;
  - (ii) a fire hydrant;
- (h) on a stand or in any area contemplated in section 6A(3)(b) of the Act if he is not in possession of proof that he has hired such stand or area from the Council or that it has otherwise been allocated to him;
- (i) in contravention of the terms and conditions of the lease or allocation to him of a stand or area contemplated in section 6A(3)(b) and (c) of the Act.

#### 4. RESTRICTIONS

- (1) No person carrying on the business of a street trader shall-
  - (a) if such business is carried on any public road or public place
    - (i) sleep overnight at the place of such business; or
    - (ii) erect any permanent structure at the business site for the
      - purpose of providing shelter;
      - without prior written approval of the Council,
  - (b) carry on such business in such a manner as to-
    - (i) create a nuisance
    - (ii) damage or deface the surface of any public place or any public or private property or
    - (iii) create a traffic hazard
  - (c) other than in a surface receptacle approved or provided by the council, accumulated, dump, store or deposit or cause of permit to be accumulated, dumped, stored or deposited by litter or any land or premises or on any public road or public place;
  - (d) obstruct access to a service or to service works of the Council or of the State or any statutory body;
  - (e) interfere with the ability of a person using a sidewalk to view the goods displayed behind a shop display window or obscure such goods from view;
  - (f) obstruct access to a pedestrian arcade or mall;
  - (g) carry on business or take up a position or place his property on a portion of a sidewalk or public place in contravention of a notice or sign erected or displayed by the Council for the purpose of these bylaws;
  - (h) carry on such business in a place or area in contravention of any restriction imposed by Council resolution in terms of Section 6A(2)(a) of the Act;
  - (i) obstruct access to pedestrian crossing, parking or loading bays or other facilities for vehicular or pedestrian traffic;

- (j) obstructs access to or the use of street furniture such as bus passenger benches or shelters and queuing lines, refuse disposal bins, and other facilities designed for the use of general public; or
  - (k) obscure any road traffic sign displayed in terms of the Road Traffic Act of 1996, and Regulations made thereunder or any marking, notice or sign displayed or made in terms of these bylaws
- (2) The Council shall reserve the right to restrict the number of street traders and street trader associations.

**5. CLEANLINESS OF PLACE OF BUSINESS AND PROTECTION OF PUBLIC HEALTH**

Every street trader shall-

- (a) unless prior written approval exempting him or her from this provisions of this paragraph has been given by the Council, daily remove from any public road or public place at the end of each trading day or at the conclusion of trading all goods, movable structures, waste, packaging material, stock and equipment of whatsoever nature which are utilized in connection with such trading;
- (b) carry on this business in such a manner as not to be a danger or threat to public health or public safety;
- (c) at the request of a officer or an employee of the Council move or remove anything so that the place of business may be cleaned;
- (d) keep the area or standard occupied by him for the purpose of his business as well as his property in a clean and sanitary condition and free from litter; or
- (e) if his activities involve the cooking or other preparation of food, take steps to ensure that no fat or oil or substance drops or overflows onto the surface of a sidewalk or splashes against the building or other structure

**6. TRADING IN PARKINGS AND GARDENS**

No street trader shall carry on business in a garden or parking to which the public has the right of access except with the prior written approval of the Council’s Municipal Manager or other authorized official and in compliance with an condition imposed by him or her when granting such consent.

**7. OBJECTS USED FOR DISPLAYS OF GOODS**

A street trader shall ensure that any structure, container, surface or other object used by him for the preparation, display, storage, or transportation of goods-

- (a) is maintained in a good state of repair and in a clean and sanitary condition, and
- (b) is not so placed or stacked so as to constitute a danger to any person or so as to be likely to injure any person.

**8. REMOVABLE AND IMPOUNDMENT**

- (1) For the purpose of this bylaws “goods includes any receptacle vehicle or movable structure.
- (2) An officer may remove and impound goods-
  - (a) which he reasonable suspects are being used or are intended to be used or have been used in or in connection with the carrying on of any business of a street trade,
  - (b) which he finds at a place where the carrying on of such business is restricted in terms of Section 3(h) or Section 5 or prohibited in terms of Section 2(a) to

(g) and which in his opinion constitutes an infringement of such provision, whether or not such goods are in the possession or under the control of any person at the time of such removal or impoundment.

- (3) Any officer acting in terms of subsection (2) shall-
  - (a) except in the case of goods which have been left or abandoned, issue to the person carry on the business of street trader a receipt of any goods so removed and impounded; and
  - (b) forthwith deliver any such goods to the authorized official
- (4) Neither the Council nor a councillor official, officer or employee of the Council shall be liable for any loss of or damage to any goods removed and impounded in terms of this section.

## **9. DISPOSAL OF IMPOUNDED GOODS**

- (1) Any perishable goods removed and impounded in terms of section 8 (2) may at any time after impoundment thereof be sold or destroyed by the Council and in the case of a sale of such goods the proceeds thereof less any expenses incurred by the Council in connection with the removal, impoundment and sale of such goods, shall, upon presentation of the relevant receipt issued in terms of section 8 (3)(a), be paid to the person who was the owner of such goods when such goods were impounded. If such owner fails to claim the said proceeds within three months of the date on which such goods were sold, such proceeds shall be forfeited to the Council.
- (2) The owner of any goods (other than perishable goods), dealt with by the Council in terms of sub section 1, impounded in terms of section 8(2) who wishes to claim the return of such goods shall, within a period of one month of the date of the impoundment of such goods, apply to the Council and shall present the relevant receipt issued in terms of section 8(3)(a), failing which such goods may be sold by the Council and in the event of sale of such goods the provisions of sub section 9(1) relating to the proceeds of a sale shall apply.
- (3) If the owner of any goods impounded in terms of section 8(2) claims the return of such goods from the Council and such owner is unable or refuses to refund any expenses incurred by the Council in connection with the removal and impoundment of such goods, such goods may be sold by the Council and proceeds of any sale of such goods less any such expenses and the cost of such sale shall be paid to such owner.
- (4) In the event of the proceeds of any sale of goods contemplated by this section not being sufficient to defray any expenses incurred by the Council in connection with the removal, impoundment and sale of such goods, the owner of such goods shall remain liable for so much of such expenses as is not defrayed by the proceeds of the sale of such goods.

## **10. GENERAL OFFENCE AND PENALTIES**

- (1) Any person who-
  - (a) contravenes or fails to comply with any provision of these bylaws;
  - (b) ignores, disregards or disobeys any notice, sign or making displayed or erected for the purpose of these bylaws;
  - (c) contravenes or fails to comply with any approval or condition granted or imposed in terms of these bylaws;
  - (d) for the purpose of these bylaws make a false statement knowing it to be false in a material respect or deliberately furnishes false or misleading information to an authorized official or officer; or
  - (e) threatens, resists, interferes with or obstructs an authorized official, officer or employee of the Council in the performance of his powers, duties or functions under these bylaws, shall be guilty of an offence and on conviction be liable to a fine of five hundred Rand or imprisonment for a period not exceeding three months.

- (2) When an employee of a street trader performs any act or is guilty of any omission which constitutes an offence under these bylaws the employer shall be deemed to have performed the act or to be guilty of the omission himself and he can prove that-
1. in performing the act or being guilty of the omission the employee was acting without his knowledge or permission;
  2. all reasonable steps were taken by him to prevent the act or omission; and
  3. it was not within the scope of the authority or the course of the employment of the employee to perform an act of the kind in question.
- (3) The fact that an employer issued instructions forbidding any act or omission referred to in sub section (2) shall not of itself be accepted as sufficient proof that he took all steps referred to in paragraph (b) of that sub section.
- (4) When an employer is by virtue of the provisions of sub section (2) liable for anything done or omitted by his employee, then that employee shall also be liable to prosecution for the offence.

#### **11. CONFLICT OF LAWS**

If there is any conflict between these bylaws and any other bylaws of the Council, these bylaws will prevail.